

IN THE HIGH COURT OF SINDH, KARACHI

Before:

**Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi**

Special Criminal Anti-Terrorism Jail Appeal No.96 of 2019

Appellant : Thomas Masih @ Bili S/o Ashique Masih
Through Mr. Nadeem Ahmed Azhar,
Advocate

Respondent : The State
Through Mr. Muhammad Iqbal Awan,
Deputy Prosecutor General.

Date of Hearing : 17-12-2019

Date of Judgment : 24-12-2019

J U D G M E N T

ZULFIQAR ALI SANGI---J., Appellant filed instant Spl. CrI. Anti-Terrorism Jail Appeal on being aggrieved and dissatisfied with the impugned judgment dated 24.11.2018 passed by learned Judge, Anti-Terrorism Court No.I, Karachi Division in New Special Cases No.277 and 278 of 2016 [Old Special Cases No.AJ-243/2015 and AJ-244/2015] under FIRs No.305 and 306 of 2015 for the offences under sections 353/324 PPC R/w Section 7 ATA, 1997 and 23(i)(a) Sindh Arms Act, 2013 registered at PS Frere, Karachi whereby the appellant was convicted and sentenced as under:-

- a) *Convicted u/s 265-11(2) and sentenced R.I. for five years with fine of Rs.20,000/- for the offence punishable u/s 7(h) of ATA, 1997. In case of non-payment of fine, he shall suffer S.I. for six months more.*
- b) *Convicted and sentenced R.I. for ten years with fine of Rs.50,000/- for the offence punishable under section 324 PPC R/w section 7(c) of ATA, 1997. In case of non-payment of fine, he shall further suffer S.I. for six months more.*
- c) *Convicted and sentenced R.I. for five years with fine of Rs.20,000/- for the offence punishable u/s 23(i)(a) of Sindh Arms Act, 2013. In case of non-payment of fine, he shall suffer S.I. for six months more.*

All the sentences were ordered to run concurrently. The benefit of section 382(B) Cr.P.C. was extended to the appellant.

2. Brief facts of the prosecution case are that on 04.10.2015, complainant SIP Muhammad Sadiq with subordinate staff was patrolling in the area of Railway Diesel Workshop near Hassan Hospital, Karachi. At about 0015 hours he found one suspect on motorcycle and when he was signaled to stop the culprit in order to deter the police party started firing upon them with intention to commit their murder. Police also fired in their defence. Due to encounter, accused whose name later came to be known as Thomas Masih @ Bili son of Ashique Masih sustained bullet injuries on his left leg and fell down. Due to falling down he also sustained injuries on his neck. Accused was apprehended and on his personal search one 30 bore pistol with four live bullets, two mobile phones and Rs.150/- were recovered. Police also recovered two empties of 30 bore pistol and three empties of SMG from place of incident. Police also secured motorcycle Honda 125 of accused without registration number u/s 550 Cr.P.C. Accused failed to produce license of the pistol, as such, he was arrested on the spot after sealing the case property. Accused and case property were brought at police station and present FIRs were registered.

3. After registration of the FIRs, the investigation of both cases was entrusted to ASI Muhammad Rizwan Akram, who inspected the place of incident, prepared such memo in presence of mashirs, recorded statements of witnesses u/s 161 Cr.P.C. He referred one 30 bore pistol with bullets and empties recovered from place of incident under his letter to Incharge FSL for report which he received and after completing usual investigation handed over

papers to Inspector Wasim Ahmed Shah who after inserting section 7 of ATA, 1997 submitted charge sheet in the court of law.

4. Formal charge (Ex.4) was framed against accused Thomas Masih @ Bili to which he pleaded not guilty and claimed to be tried.

5. In order to prove its cases, prosecution examined five prosecution witnesses which details are available in the impugned judgment, who gave oral as well as documentary evidence. Thereafter, learned DDPP for the State closed its side.

6. The statement of accused Thomas Masih @ Bili son of Ashique Masih was recorded u/s 342 Cr.P.C. at Ex.14, to which he totally denied the allegations leveled by the prosecution and stated that he is innocent and has been falsely implicated in this case. Nothing was recovered from his possession and the alleged recovery of TT Pistol with bullets have been foisted upon him. He further stated that all the prosecution witnesses are police officials as well as interested witnesses, as such, they falsely implicated him. He lastly prayed for justice. The accused however did not opt to depose on oath u/s 340(2) Cr.P.C. nor examine any witness in his defence.

7. At the outset, learned counsel for the appellant in the face of overwhelming evidence against him and under the instructions of his client/appellant has not pressed the instant appeals on merit but has requested for a reduction in sentence on the ground that the appellant is the only male member of a large family of which he is the main breadwinner, he is aged about 23 years and is not a previous convict and is capable of reformation.

8. Mr. Muhammad Iqbal Awan, learned DPG appearing for the State has no objection to a reduction in sentence to some

reasonable extent taking into account the above mitigating circumstances.

9. We have heard the arguments of learned counsel for the parties and have perused the material available on record.

10. The record reflects that all the prosecution witnesses supported the case of prosecution, arrest of appellant at spot in injured condition as well as recovery of pistol were proved by the prosecution by providing oral and documentary evidence including reports of MLC of appellant and we are satisfied that the prosecution has proved its case against the appellant beyond a reasonable doubt.

11. In view of the mitigating circumstances raised by the appellant and no objection extended by learned Deputy Prosecutor General, we have carefully gone through the relevant law for which appellant was convicted, the punishment provided under Sections 324, PPC is produced as under:-

“S.324. Attempt to commit qatl-i-amd. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused qatl, he would be guilty of qatl-i-amd, shall be punished with imprisonment of either description for a term which may extend to ten years [but shall not be less than five years, if the offence has been committed in the name or on the pretext of honour], and shall also be liable to fine, and, if hurt is caused to any person by such act, the offender shall be liable to the punishment provided for the hurt caused. Provided that, where the punishment for the hurt is qisas which is not executable, the offender shall be liable to arsh and may also be punished with imprisonment of either

description for a term which may extend to seven years.”

12. Punishment provided under section 7 (c and h) of ATA, 1997 as under:-

“S.7(c) grievous bodily harm or injury is caused to any person, shall be punishable, on conviction, with imprisonment of either description for a term which shall not be less than [ten years] but may extend to imprisonment for life and shall also be liable to a fine: or

S.7 (h). the act of terrorism committed falls under clauses (h) to (n) of sub-section (2) of section 6 shall be punishable, on conviction, to imprisonment of not less than [five years] and not more than [but may extend to imprisonment for life] and with fine;” and

13. Punishment provided under Section 23(i)(a) of Sindh Arms Act, 2013 is produced as under:-

“23. Punishment for certain offences. – (1) Whoever – (a) acquires, possesses, carries or control any firearm or ammunition in infringement of section 3, shall be punishable with imprisonment for a term which may extend to fourteen years and with fine;”

14. We have found that only the appellant received an injury during the encounter and that no injury was received by police official nor any bullet hit to the police mobile. In these circumstances, it also appears to us that there was no object, design or intent to create terror and as such we set-aside the conviction and sentence awarded by the trial Court under Section 7 (c) of the ATA which is not applicable to the facts and circumstances of the present case.

15. The above provisions of law provide the words may extend to (S.324, ten years and S. 7 (h) provides the punishment not less than 05 years but may extend to imprisonment for life.) as stated above and thus do not restrain the Court from awarding lesser sentence in its discretion keeping in view Section 423 Cr.P.C.

16. Since the appellant is the sole bread winner of a large family, is of previous good character and in our view is capable of reformation under such circumstances, we hereby dismiss the instant appeal of the appellant on merits but reduce the sentences of appellant as under:-

- a) *Convicted u/s 265-11(2) and sentenced R.I. for five years with fine of Rs.20,000/- for the offence punishable u/s 7(h) of ATA, 1997. In case of non-payment of fine, he shall suffer S.I. for six months more.*
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- c) *Convicted and sentenced R.I. for five years with fine of Rs.20,000/- for the offence punishable u/s 23(i)(a) of Sindh Arms Act, 2013. In case of non-payment of fine, he shall suffer S.I. for six months more.*

17. All the other sentences and fines, penalties etc. should remain intact however all sentences of imprisonment shall run concurrently and the appellant shall also have the benefit of Section 382(B) Cr.P.C.

18. The instant appeals are disposed of in the above terms.

JUDGE

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